

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DEVIN SMITH,)	
)	Petitioner,
)	
)	C.A. No. 19-64 Erie
v.)	
)	District Judge Susan Paradise Baxter
)	Magistrate Judge Richard A. Lanzillo
FCI MCKEAN WARDEN,)	
)	Respondent.
)	

MEMORANDUM ORDER

On March 11, 2019, Petitioner Devin Smith, an inmate incarcerated at the Federal Correctional Institution at McKean in Bradford, Pennsylvania (“FCI-McKean”), filed this *pro se* action for habeas corpus relief pursuant to 28 U.S.C. § 2241. In his habeas petition, Petitioner challenges the calculation of his federal release date by the Bureau of Prisons (“BOP”), contending that the BOP should have exercised its discretion to retroactively provide him with custody credit for the time he spent in state custody pursuant to the Third Circuit Court’s decision in Barden v. Keohane, 921 F.2d 476 (3d Cir. 1991). The petition was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On June 29, 2021, Magistrate Judge Lanzillo issued a Report and Recommendation (“R&R”) finding that the BOP did not abuse its discretion and recommending that the petition be denied [ECF No. 10]. Objections to the R&R were due to be filed by July 16, 2021; however, no objections have been received from Petitioner.

Thus, after *de novo* review of the petition and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 12th day of August, 2021,

IT IS HEREBY ORDERED that the within petition for a writ of habeas corpus is DENIED. The report and recommendation of Magistrate Judge Lanzillo, dated June 29, 2021 [ECF No. 10], is adopted as the opinion of this Court. As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."



SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
United States Magistrate Judge

All parties of record